IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 892 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO.LTD.

Versus

JASHIBEN MURA RABARI

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Appearance:

MR RAJNI H MEHTA for Petitioner

NOTICE SERVED for Respondent No. 1,11

MR MD PANDYA for Respondent No. 10

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. The New India Assurance Co. Ltd. has preferred this appeal against the judgement and award of the Motor Accident Claims Tribunal, Jamnagar in MACP Case No : 60 of 1979.

#. Shri Rajani H. Mehta, learned counsel for the appellant and Mr.M.D.Pandya, learned Counsel for the respondent have been heard. Despite service of notice on respondent No : 1 to 9 and 11, none appears on their behalf.

#. The brief facts giving rise to this appeal are that on 17-7-1978, a vehicular accident took place in which, six persons died and one person sustained injuries. The truck bearing registration No : GTY 3144 was involved in the accident. In all, seven claim petitions were filed alleging that the accident took lace on account of rash and negligent driving of the truck by the driver. In this appeal, Claim Petition No : 60 of 1979 is to be considered. Shri Rajani Mehta has informed that in all other claim petitions, the appellant insurance company was exonerated from liability. He has assailed the judgment and award of the tribunal in MACP Case No : 60 of 1979 on the ground that the accident took place from a truck which was admittedly a goods vehicle. He referred to the observation of the tribunal, wherein the tribunal has also observed that the truck in question was a goods vehicle and was not meant for carriage of passengers. He therefore, contended that since the truck in question was not meant for carriage of passengers, the insurance company is not liable. Likewise, he contended that even considering the terms of the insurance policy, no liability can be fastened upon the appellant. Lastly, he contended that in view of the Apex Court Judgment in case of Smt.Mallawwa etc. V. The Oriental Insurance Co. Ltd. reported in JT 1998(8) SC 217 also, the insurance company is not liable.

#. So far as the insurance policy is concerned, there is express prohibition that the policy in respect of the truck in question did not cover the risk for use of the vehicle for conveyance of the passengers for hire or reward. Even if it is believed that the deceased paid fare to the driver and was carrying his milk in the said truck, it can not be said that the vehicle was used for carriage of passengers. Since carriage of passengers was strictly prohibited in the policy itself, the insurance company cannot be said to be liable.

#. The tribunal has in para 56 of its judgment observed that the deceased Mura Pala was carrying milk cane and milk brass pot with him to Jamnagar as he was dealing in milk business. Therefore, at the most, it can be said according to the tribunal that he was travelling in the offending truck as owner of the goods and therefore,

claim arising out of death of the deceased could be covered by the Insurance Policy. This observation of the tribunal is also contrary to law in view of Apex Court judgement in SMT.MALLAWWA ETC. (SUPRA).

#. The Apex Court in SMT MALLAWWA ETC. case interpreted the provisions of Section 95 of the Motor Vehicles Act and in para 10, it was held by the Apex Court that for the purpose of Section 95 ordinarily, a vehicle could have been regarded as vehicle in which passengers have carried if the vehicle was of that class. Keeping in mind the classification of vehicles, by the Act, the requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions that vehicle for carrying passenger for hire or reward. For the purpose of construing a provision like proviso (ii) to Section 95(1) (b), the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward.

#. Applying this test to the facts of the present case, I find that the tribunal has nowhere observed that the truck in question was being used either by the owner or by the driver on previous occasions for carrying passengers along with their goods. If it was a case of stray use of vehicle for carriage of passengers, goods vehicle cannot be classified as vehicle used for carriage of passengers. If that was so, then merely because the deceased was travelling in the truck along with his milk cane and milk brass cane, it does not alter the situation. The goods vehicle cannot be converted into a vehicle meant for regular carriage of passengers. Consequently, the case is fully covered by observations of Apex Court in SMT. MALLAWWA (SUPRA) and the tribunal was obviously in error in awarding compensation of Rs.50,000/- to the legal representatives of the deceased from the appellant company. The appellant company on the other hand should have been exonerated by the tribunal like in other claim petitions.

#. The appeal has therefore merits and is bound to succeed. The appeal is allowed. The award of the Motor Accident Claims Tribunal in appeal arising out of Claim Petition Case No : 60 of 1979 against the appellant is

hereby quashed. The amount deposited by the appellant insurance company in compliance of the order dated 17-9-1980 which could not be withdrawn by the claimants shall be paid to the appellant. No order as to costs.

Date : 28-3-2000 [ D.C.Srivastava, J. ]

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